

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**Docket No. AB 33 (Sub-No. 313X)**

**Union Pacific Railroad Company – Abandonment Exemption – in Miami County, Ks.**

**BACKGROUND**

In this proceeding, Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Miami County, Kansas. The rail line proposed for abandonment extends approximately 0.5 miles from Milepost 335.0 to Milepost 335.5 near Osawatomie (the Line). Maps depicting the Line in relationship to the area served are appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way.

**ENVIRONMENTAL REVIEW**

UP submitted an Environmental Report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. UP served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (the Board) environmental rules [49 C.F.R. § 1105.7(b)].<sup>1</sup> The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

***Diversion of Traffic***

UP states no local rail traffic has moved over the Line for at least two years and that there is no overhead traffic. The Line was excluded from a previous abandonment of an adjacent line of railroad due to its role in turning locomotives and railcars handled at the Osawatomie yard in UP's Coffeyville Subdivision. There were never any rail customers located along the Line. UP states that, should the proposed abandonment be approved, Osawatomie would continue to

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<sup>1</sup> The Environmental and Historic Reports are available for viewing on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov) by going to "E-Library," selecting "Filings," and then conducting a search for AB 33 (Sub-No. 313X).

receive rail service from the Coffeyville Subdivision. The area is also served by a number of existing roads and highways.

Because no rail traffic currently moves on the Line, the proposed abandonment would not adversely impact the development, use, or transportation of energy resources or recyclable commodities; the transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

### ***Salvage Activities***

If abandonment authority is granted in this proceeding, UP states that it would salvage track, ties, and would dismantle and remove any railroad signals along the Line. UP intends to level and leave in place ballast, but may salvage ballast up to approximately one inch in depth if it is suitable for resale or to make the right-of-way suitable for a planned future use. Road crossings would be removed and remediated. Salvage work would take place within the existing rail right-of-way and would be performed by experienced rail material salvagers using specialized machinery to minimize environmental disturbance.

UP has requested comments from the Miami County Board of Commissioners, but has received no response to the date. UP states that it believes the proposed abandonment to be consistent with existing local land use plans. UP believes that the Line would not be suitable for public purposes such as highways, public transportation, or energy production or transmission, as the area is already adequately served by existing roads and utilities. UP states that the right-of-way may be suitable for conversion to a recreational trail as the property could connect two existing trails.

The U.S. Natural Resource Conservation Service submitted comments stating that the proposed abandonment would have no effect on prime farmland. Accordingly, no mitigation regarding the conservation of agricultural land is recommended.

UP states, and OEA review has confirmed, that the Line does not cross any water bodies. Based on available data, the Line does not cross a regulatory floodway and is not located in 100-year flood plain.<sup>2</sup> In its review of the best available data, OEA has concluded that the Line may cross areas containing wetlands. UP states that two small ponds are located near the Line, outside of but adjacent to the northern boundary of the right-of-way.

The U.S. Army Corps of Engineers (the Corps) submitted comments stating that the abandonment of the Line would not necessarily require authorization from the Corps under

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<sup>2</sup> Federal Emergency Management Agency (FEMA) Mapping Information Platform, <https://hazards.fema.gov/femaportal/wps/portal> (last visited July 22, 2013).

Section 404 of the Clean Water Act.<sup>3</sup> However, the Corps states that salvage activities involving excavation or fill that would result in the discharge of dredged or fill material into streams or wetlands may require a Corps permit. UP states that, because it does not intend to undertake any excavation or fill activities, and because no salvage operations will take place within waterways, the proposed abandonment would not require a Corps permit. Based on the description of the proposed project, OEA concurs with UP's determination that a Corps permit under Section 404 would not be required.

UP has requested comments from the U.S. Environmental Protection Agency Region 7 and the Kansas Department of Health and Environment (KDHE) regarding compliance with Section 402 of the Clean Water Act<sup>4</sup> and other applicable local, state, and federal water quality regulations. To date, UP has received no response from these agencies. UP states that the proposed abandonment would not result in the discharge of any pollutants and would therefore not require permitting under Section 402. Because salvage activities would be limited to the removal of track and ties, and because all work would be confined to the rail right-of-way, OEA concurs with UP's determination that a Section 402 permit would not be required. OEA is sending a copy of this EA to KDHE for their comment and review.

UP states that there are no known hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. OEA review has confirmed that there are no listed Superfund sites in the vicinity of the Line.<sup>5</sup> Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is recommended.

UP has requested comments from U.S. Fish and Wildlife Service (USFWS) on the potential effects of the proposed abandonment on federally listed threatened and endangered species, but has received no response to date.

In its review of available geospatial data, OEA has concluded that the proposed abandonment is not located in an area designated as critical habitat.<sup>6</sup> OEA also conducted a search of the USFWS Environmental Conservation Online System in order to identify any federally listed endangered or threatened species that may be present in the vicinity of the Line.<sup>7</sup> The search identified Mead's milkweed (*Asclepias meadii*) as the only federally listed threatened species known or believed to occur in Miami County, Kansas. The search did not identify any endangered species known or believed to occur in the county.

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<sup>3</sup> 33 U.S.C. § 1344.

<sup>4</sup> 33 U.S.C. § 1342.

<sup>5</sup> Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last visited July 22, 2013).

<sup>6</sup> U.S. Fish and Wildlife Service, Critical Habitat Portal, <http://criticalhabitat.fws.gov/crithab> (last visited July 22, 2013).

<sup>7</sup> U.S. Fish and Wildlife Service, Environmental Conservation Online System, <http://ecos.fws.gov/ecos/indexPublic.do> (last visited July 22, 2013).

Mead's milkweed is a species of flowering plant generally found in areas dominated by tallgrass prairie. Activities that are likely to negatively impact this species include the loss or fragmentation of tallgrass prairie habitat, and the mowing of fields where the plant occurs. Because UP does not anticipate any such activities, OEA believes that the proposed abandonment would not result in any impacts to Mead's milkweed or any other federally listed threatened or endangered species. Accordingly, no mitigation regarding the protection of biological resources is recommended. OEA is sending a copy of this EA to USFWS for their review and comment.

UP has requested comments from the National Park Service (NPS) regarding the potential impact of the proposed abandonment on wildlife sanctuaries or refuges, parks, or other protected areas, but has received no response to date. In its review of available geospatial data, OEA has concluded that the proposed abandonment is not located in or adjacent to any local or national park; wildlife sanctuary or refuge; or other protected area. Accordingly, no mitigation regarding protected areas is recommended.

The National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment on any geodetic survey markers that may be present in the project area. Accordingly, OEA is recommending a condition requiring UP to consult with NGS prior to beginning salvage activities.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. OEA is providing a copy of this EA to the following agencies for their review and comment: USFWS and KDHE.

## **HISTORIC REVIEW**

According to UP, the Line was originally constructed in 1880 by the St. Louis, Kansas & Arizona Railway and later served as the eastern end of the Missouri Pacific Railroad route to Pueblo, Colorado. The Line was most recently constructed with 136 pound welded rail laid in 1976. Some portions of track not required for the Line's current purpose of turning locomotives and railroad cars have been removed. There are no structures on the Line.

The Kansas Historical Society (State Historic Preservation Office or SHPO) submitted comments stating that the proposed abandonment as proposed would have no effect on properties listed in the National Register of Historic Places (National Register) or otherwise identified in the SHPO's files. The SHPO states that it has no objection to the proposed abandonment. The SHPO also states that any changes to the proposed project area should be reviewed by the SHPO and, should any archeological materials be discovered during salvage activities, UP should inform the SHPO immediately. Accordingly, OEA is recommending a condition requiring UP to inform and consult with the SHPO should any unanticipated discoveries be made during salvage operations.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that no known historic properties listed in or eligible for inclusion in the National Register would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's Historic Report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov).

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Park Service Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area.<sup>8</sup> The search identified the Prairie Band of Potawatomi Nation in Kansas as potentially having knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment. Accordingly, OEA is sending a copy of this EA to that tribe for their review and comment.

## **CONDITIONS**

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Union Pacific Railroad Company (UP) shall consult with the National Geodetic Survey (NGS) prior to beginning salvage activities. If NGS identifies geodetic station markers that may be affected by the proposed abandonment, UP shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.**
- 2. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's salvage activities, Union Pacific Railroad Company will immediately cease all work and notify the Office of Environmental Analysis (OEA), interested federally recognized tribes, and the Kansas Historical Society (State Historic Preservation Office or SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, interested federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.**

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<sup>8</sup> National Park Service, National NAGPRA Program Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited July 12, 2013).

## **CONCLUSIONS**

Based on the information provided from all sources to date, OEA concludes that, if the conditions above are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption would not be affected.

## **PUBLIC USE**

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

## **TRAILS USE**

Requests for a notice of interim trail use (NITU) are due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

## **PUBLIC ASSISTANCE**

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB 33 (Sub-No. 313X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions

regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at waylandj@stb.dot.gov.

Date made available to the public: July 26, 2013

**Comment due date: August 12, 2013**

By the Board, Victoria Rutson, Director, Office of Environmental Analysis